

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Daniel McNeil, Jr.,

PETITIONER

v.

Warden, Evans Correctional Institution,

RESPONDENT

Case No. 4:15-cv-1105-TLW-TER

ORDER

Petitioner Daniel McNeil, Jr., a state prisoner proceeding *pro se*, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1.) The matter now comes before the Court for review of the Report and Recommendation (R&R) of Magistrate Judge Rogers, to whom this case was assigned. (ECF No. 26.) In the R&R, the Magistrate Judge recommends granting Respondent's motion for summary judgment (ECF No. 16) over Petitioner's opposition (ECF No. 24). Petitioner filed objections to the R&R (ECF No. 32), and this matter is now ripe for decision.

In reviewing the R&R, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Hous. Auth. of City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in *Wallace*, the Court closely reviewed *de novo* the R&R, Petitioner's objections, and the record in this case. Petitioner's objections essentially restate the arguments advanced in his habeas petition and his brief opposing summary judgment. (*Compare* ECF Nos. 1, 24, and 32.) To the extent that Petitioner makes an additional assertion related to an alleged conflict based on defense counsel's role as an assistant solicitor in an earlier prosecution, this allegation does not change the conclusion reached by the PCR court and the Magistrate Judge that Petitioner's ineffective assistance of counsel claims have no merit. (*See* ECF No. 32, pp. 13-24; ECF No. 26, pp. 2-9.)

After careful consideration, Petitioner's objections are **OVERRULED**, and the R&R is **ACCEPTED**. For the reasons articulated by the Magistrate Judge, Respondent's motion for summary judgment is **GRANTED**.

IT IS SO ORDERED.

s/ Terry L. Wooten
Terry L. Wooten
Chief United States District Judge

February 19, 2016
Columbia, South Carolina